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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 91

MURIEL MAY SCOTT, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The majority and minority opinions of the Court of Appeals are reported at 350 F. 2d 279 (R. 22–31).[1] The opinions of the special inquiry officer and the Board are not reported but are set forth at R. 4–19.

JURISDICTION

The judgment of the court of appeals was entered on July 14, 1965. On October 13, 1965, Mr. Justice Harlan extended the time for filing a petition for a writ of certiorari to and including December 11, 1965. The petition for certiorari was filed on December 10, 1965 and was granted on March 21, 1966.

[1] "R" references are to the printed transcript of record.

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The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

An alien who is deportable because he entered through fraudulent misrepresentations is excused from deportation on that account by Section 241(f) of the Immigration and Nationality Act, if he has close relatives in the United States and was "otherwise admissible at the time of entry." Relying upon a sham marriage, petitioner gained entry by representing herself as the wife of an American citizen, thus fraudulently attaining non-quota status and avoiding the quota restrictions which would have precluded her entry. A child was subsequently born out of wedlock to her in this country. The question is whether, as the parent of such a child, she is entitled to the waiver provided by Section 241(f), even though at the time of her entry she had not complied with the quota requirements of the statute, and could not have been lawfully admitted in accordance with her true status as a non-preference immigrant because the quota of her country was substantially oversubscribed.

STATUTES INVOLVED

The relevant statutes are set forth in Petitioner's brief in the companion case of *Immigration and Naturalization Service* v. *Errico*, No. 54, this Term.

STATEMENT

Petitioner is a native of Jamaica, now 30 years of age. She was admitted to the United States as a nonquota immigrant on August 6, 1958, upon the representation that she was the wife of an American citi-

zen. The alleged marriage was concededly a sham, undertaken solely to evade the quota restrictions of the immigration laws. Petitioner has admitted that she and her sister, Gloria Slade, agreed to pay $500 to one Goldbourne to make the necessary arrangements. Goldbourne brought one Lloyd to Jamaica, where he went through a marriage ceremony with petitioner under the name of Edward Lee Scott, an American citizen. Petitioner had not known Lloyd (alias Scott) before the marriage and has not seen him since. The marriage was never consummated, and the parties understood that the marriage was being performed solely to enable petitioner to obtain non-quota status. Since her arrival in the United States petitioner has given birth to a child out of wedlock. She has lived with her sister,[2] although in her visa application she represented that she was coming to the United States to live with her husband.[3] R. 5–8, 15.

When the fraud was discovered, deportation proceedings were commenced against petitioner. She was charged with having fraudulently obtained entry as a non-quota immigrant on the basis of a pretended marriage to an American citizen. R. 2–4. A hearing

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[2] The sister entered the United States on the basis of a similar sham marriage, also had a child born out of wedlock, and also is under order of deportation. *Matter of Slade*, 10 I. & N. Dec. 128 (1962). The sister also is challenging an order for her deportation, and her petition for judicial review (No. 29,600, C.A. 2) is being held in abeyance to await this Court's decision in the instant case.

[3] Service records indicate that petitioner has made no effort to terminate this sham marriage and has not remarried. See R. 20. It is also indicated that Mr. Scott apparently was already married. R. 9–10.

was held before a special inquiry officer who found petitioner deportable on the ground that she was not a non-quota immigrant as specified in the immigrant visa she presented at the time of her entry. The special inquiry officer directed that petitioner be granted the privilege of voluntary departure. However, he deemed her ineligible for correction of the improper non-quota allocation, under Section 211(c) of the statute, as it then read, because her fraud was deliberate. And he found her ineligible for waiver of deportability under Section 241(f). R. 4–13.

Petitioner appealed to the Board of Immigration Appeals, which on August 14, 1962 affirmed the deportation order. The Board considered the applicability of Section 241(f) and found petitioner ineligible for relief under that provision because she was not "otherwise admissible" at the time of her entry, since she was actually a quota immigrant and entered as a non-quota immigrant. R. 14–19.

A petition for judicial review was then filed in the United States Court of Appeals for the Second Circuit. R. 19–21. On July 14, 1965 that court affirmed the deportation order. The court agreed with the Board of Immigration Appeals that the participant in a sham marriage, contracted solely to circumvent the immigration laws, did not acquire non-quota benefits as the spouse of an American citizen. It likewise affirmed the ruling that petitioner did not qualify for the waiver of deportability under Section 241(f), Judge Smith dissenting. R. 22–31.

ARGUMENT

The arguments supporting the respondent's position in the instant case are fully canvassed in petitioner's brief in the companion case of *Immigration and Naturalization Service* v. *Errico,* No. 54, this Term. We respectfully refer the Court to that discussion, which it seems unnecessary to repeat. Our conclusion here, as there, is that Section 241(f) of the Immigration and Nationality Act was enacted for the limited purpose of waiving deportability resulting from the misrepresentation itself, and was not intended to excuse failure to comply with applicable quota restrictions.

Petitioner admittedly committed fraud in obtaining admission as the alleged wife of an American citizen. Her fraud enabled her to enter the United States as a non-quota immigrant, a status to which she was not entitled. As in *Errico* (Brief in No. 54, p. 31), petitioner resorted to this deception in order to bypass thousands of immigrants waiting to immigrate lawfully. As a non-preference immigrant from Jamaica petitioner could not have entered legally, since she would have had to await her turn on the waiting list of a quota that was substantially oversubscribed. Her unlawful entry, coupled with the birth of a child out of wedlock in the United States, did not give her an exemption from the quota she could not have attained lawfully.[4] Since she was

[4] At the time of her entry, petitioner was not the parent of a United States citizen. Even if she had then been the parent of a United States citizen she would have received no preference or exemption under the quota unless the child was

not "otherwise admissible" at the time of her entry, Section 241(f) did not waive deportation for the entry in violation of law. The deportation order against petitioner thus was properly entered.[5]

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at least 21 years of age. Section 203(a)(2), Immigration and Nationality Act, 66 Stat. 178. As amended in 1965, the statute exempts parents of United States citizens from quota restrictions as "immediate relatives", but again this exemption is limited to parents of children who are at least 21 years of age. Section 201 (a) and (b), Immigration and Nationality Act, as amended, 8 U.S.C., Supp. I, 1151 (a) and (b).

[5] Unlike *Errico*, petitioner in the instant case would not be eligible for adjustment of status under Section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255, since the benefits of that section are withheld from natives of a Western Hemisphere country. However, as we point out in our *Errico* brief (p. 31, n. 16), Jamaica is now an independent country of the Western Hemisphere and as a native of that country petitioner would not be subject to quota restrictions if she now sought to enter, although, once deported, she would have to apply for permission to reapply for entry, a privilege frequently granted to deportees. Section 212(a)(17), Immigration and Nationality Act, 8 U.S.C. 1182(a)(17). Having completed seven years residence, petitioner could also apply for suspension of deportation under Section 244 of the Immigration and Nationality Act, 8 U.S.C. 1254. However, as pointed out in our *Errico* brief (p. 37, n. 21), relief is discretionary and it is uncertain whether it would be granted to petitioner, if she applied.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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